

Message Text

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ACTION EUR-25

INFO OCT-01 IO-14 ISO-00 FTC-01 JUSE-00 SP-03 AID-20 EB-11

NSC-07 RSC-01 CIEP-03 TRSE-00 SS-20 STR-08 OMB-01

CEA-02 SWF-02 CIAE-00 COME-00 FRB-03 INR-11 NSAE-00

LAB-06 SIL-01 SAM-01 L-03 H-03 PA-04 PRS-01 USIA-15

DRC-01 /168 W

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R 011714Z AUG 74

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 7310

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

USMISSION GENEVA

USMISSION OECD PARIS

UNCLAS EC BRUSSELS 5828

E.O. 11652: N/A

TAGS: EIND, EEC

SUBJECT: EC COMMISSION BEGINS VERY LIMITED ANTI-TRUST PROCEEDING
AGAINST GENERAL MOTORS' BELGIAN SUBSIDIARY

REF: EC BRUSSELS 5657

1. SUMMARY: THE EC COMMISSION IS BEGINNING ANTI-
TRUST PROCEEDINGS AGAINST GM'S BELGIAN SUBSIDIARY,
GENERAL MOTORS CONTINENTAL V.V. THE COMMISSION DE-
VELOPED EVIDENCE SHOWING THAT GM CONTINENTAL USED
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THE MONOPOLY IT HOLDS FOR THE ISSUANCE OF CERTIFI-

CATES OF CONFORMITY WITH MANUFACTURER'S SPECIFICATIONS FOR OPELS AND GM CARS TO PREVENT THEIR IMPORT INTO BELGIUM BY INDIVIDUALS AND FIRMS NOT IN THE GM SALES NETWORK. THE GM CASE IS OF MINOR IMPORTANCE COMPARED WITH THE COMMISSION'S INVESTIGATION OF IBM (SEE REFTEL). END SUMMARY.

2. THE EC COMMISSION ON JULY 31 ANNOUNCED ITS INTENTION TO BEGIN PROCEEDINGS AGAINST GENERAL MOTOR'S BELGIAN SUBSIDIARY, GENERAL MOTORS CONTINENTAL N.V. OF ANTWERP FOR ABUSE OF A DOMINANT POSITION WITHIN THE MEANING OF ART. 86 OF THE ROME TREATY. THE COMMISSION'S DIRECTORATE GENERAL FOR COMPETITION, IN THE COURSE OF AN INVESTIGATION, DEVELOPED EVIDENCE SHOWING THAT GM CONTINENTAL WAS CHARGING FAR IN EXCESS OF COST FOR INSPECTIONS AND THE ISSUANCE OF CERTIFICATES OF CONFORMITY WITH MANUFACTURER'S SPECIFICATIONS FOR GM AND OPEL AUTOMOBILES WHEN SUCH VEHICLES ARE IMPORTED INTO BELGIUM BY "PARALLEL IMPORTERS" (INDEPENDENT DISTRIBUTORS) AND NOT VIA THE SALES NETWORK OF GM.

3. UNDER BELGIAN LAW, THE AFFILIATES OF THE AUTOMOBILE MANUFACTURERS HAVE THE SOLE AUTHORITY TO ISSUE CERTIFICATES OF CONFORMITY WITHOUT WHICH CARS CANNOT BE DRIVEN ON BELGIAN ROADS. THUS GM CONTINENTAL BY VIRTUE OF THE BELGIAN LAW HAS A MONOPOLY, I.E. A DOMINANT POSITION AS FAR AS ISSUING CERTIFICATES FOR GM'S CARS ARE CONCERNED.

4. THE COMMISSION BELIEVES THAT GM THROUGH THE EXCESSIVE CHARGES AND, WE UNDERSTAND, DELAYS IN ISSUING CONFORMITY CERTIFICATES, SOUGHT TO IMPEDE THE IMPORT OF GENERAL MOTORS VEHICLES INTO BELGIUM BY ANY MEANS OF DISTRIBUTION OTHER THAN THAT PROVIDED BY GM. THIS RUNS COUNTER TO THE COMMISSION'S DESIRE TO MAINTAIN PARALLEL IMPORTS SO THAT CONSUMERS MAY TAKE ADVANTAGE OF FAVORABLE PRICES.

5. IF THE PROCEEDINGS CONFIRM THAT GM HINDERED AND

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CONTINUES TO HINDER IMPORTS OTHER THAN BY ITS AFFILIATES, GM WOULD BE ENJOINED BY THE COMMISSION FROM CONTINUING SUCH PRACTICES IN THE FUTURE AND COULD BE FINED FOR PAST PRACTICES. A COMMISSION OFFICIAL TOLD US THAT A COMMISSION DECISION CAN BE EXPECTED IN ABOUT NINE MONTHS.

6. COMMENT: ALTHOUGH THE GM CASE IS LIKELY TO BE

IMPORTANT IN THE DEVELOPMENT OF THE EC COMPETITION
JURISPRUDENCE ON THE LIMITS OF EXCLUSINVE DISTRIBUTION,
IT SHOULD BE CLEARLY DISTINGUISHED FROM THE BROAD
INVESTIGATION BEING UNDERTAKEN ON IBM'S EUROPEAN
ACTIVITIES (SEE REFTEL). THE REAL STAKES IN THE IBM
CASE ARE OF FAR GREATER IMPORTANCE. GREENWALD

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